



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Permits

4 (Amendment)

5 405 KAR 8:030. Surface coal mining permits.

6 RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1,
7 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16
8 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

9 STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part
10 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917,
11 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258,
12 1267

13 NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13),
14 and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface
15 and underground coal mining operations. This administrative regulation establishes requirements
16 for granting a surface coal mining permit. This administrative regulation differs from 30 C.F.R.
17 780.25. Section 34(3) and (5) of this administrative regulation require that the permit applicant
18 submit to the cabinet after approval by the Mine Safety and Health Administration (MSHA), a: (1)
19 Copy of the final approved design plans for impounding structures; (2) Copy of all correspondence
20 with MSHA; (3) Copy of technical support documents requested by MSHA; and (4) Notarized

statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in each application for a permit to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a Social Security number shall be voluntary:

(a) A statement identifying if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b) The name, address, telephone number and, as applicable, Social Security number, and employer identification number of the:

- 1. Applicant;
 - 2. Applicant's resident agent; and
 - 3. Person who will pay the abandoned mine land reclamation fee;
- (c) For each person who owns or controls the applicant:

1 1. The person's name, address, Social Security number, and employer identification
2 number;

3 2. The person's ownership or control relationship to the applicant, including percentage of
4 ownership and location in organizational structure;

5 3. The title of the person's position, date position was assumed, and when submitted under
6 405 KAR 8:010, Section 18(5) date of departure from the position;

7 4. Each additional name and identifying number, including employer identification
8 number, federal or state permit number, and MSHA number with date of issuance, under which
9 the person owns or controls, or previously owned or controlled, a surface coal mining and
10 reclamation operation in the United States within the five (5) years preceding the date of the
11 application; and

12 5. The application number or other identifier of, and the regulatory authority for, any other
13 pending surface coal mining operation permit application filed by the person in any state in the
14 United States;

15 (d) For any surface coal mining operation owned or controlled by either the applicant or
16 by any person who owns or controls the applicant, the operation's:

17 1. Name, address, identifying numbers, including employer identification number, federal
18 or state permit number, and MSHA number, the date of issuance of the MSHA number, and the
19 regulatory authority; and

20 2. Ownership or control relationship to the applicant, including percentage of ownership
21 and location in organizational structure;

22 (e) The names and addresses of:

23 1. Every legal or equitable owner of record of the property to be mined;

1 2. The holders of record of any leasehold interest in the property to be mined; and
2 3. Any purchaser of record, under a real estate contract, of the property to be mined;
3 (f) The names and addresses of the owners of record of all surface and subsurface areas
4 contiguous to any part of the proposed permit area;
5 (g) The name of the proposed mine and all MSHA identification numbers that have been
6 assigned for the mine and all mine associated structures that require MSHA approval;
7 (h) Proof, such as a power of attorney or a resolution of the board of directors, that the
8 individual signing the application has the power to represent the applicant in the permit matter;
9 and
10 (i) A statement of all lands, interests in lands, options, or pending bids on interests held or
11 made by the applicant for lands that are contiguous to the area to be covered by the permit.
12 (2) After an applicant has been notified that his or her application has been approved, but
13 before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no
14 change has occurred in the information previously submitted under subsection (1)(a) through (d)
15 of this section.
16 (3) The permittee shall, in writing, inform the cabinet of any change of the permittee's
17 address immediately if changed at any point prior to final bond release.
18 (4) The permittee shall submit updates of the information established in paragraphs (a)
19 through (c) of this subsection in writing to the cabinet within thirty (30) days of the effective date
20 of any change. An update shall be submitted for any changes that occur at any point prior to final
21 bond release. Failure to submit updated information shall constitute a violation of KRS Chapter
22 350 only upon the permittee's refusal or failure to timely submit the information to the cabinet
23 upon request. After the permittee's refusal or failure to timely submit the information to the cabinet

1 upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance
2 with this subsection:

3 (a) The names and addresses of every officer, partner, director, or person performing a
4 function similar to a director of the permittee;

5 (b) The names and addresses of principal shareholders; and

6 (c) If the permittee or other persons specified in this subsection are subject to any of the
7 provisions of KRS 350.130(3).

8 Section 3. Violation Information. (1) Each application shall contain:

9 (a) A statement identifying if the applicant or any subsidiary, affiliate, or persons controlled
10 by or under common control with the applicant has:

11 1. Had a coal mining permit of the United States or any state suspended or revoked in the
12 five (5) years preceding the date of submission of the application; or

13 2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

14 (b) If any suspension, revocation, or forfeiture as established in paragraph (a) of this
15 subsection has occurred, a statement of the facts involved, including:

16 1. Identification number and date of issuance of the permit, and date and amount of bond
17 or similar security;

18 2. Identification of the authority that suspended or revoked the permit or forfeited the bond
19 and the stated reasons for that action;

20 3. The current status of the permit, bond, or similar security involved;

21 4. The date, location, and type of any administrative or judicial proceedings initiated
22 concerning the suspension, revocation, or forfeiture; and

23 5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number; the dates of issuance of the violation notice and MSHA number; the name of the person to whom the violation notice was issued; and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

- a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

- b. The current status of the proceedings and of the violation notice; and

1 c. The actions, if any, taken or being taken by any person identified in this subsection to
2 abate the violation.

3 (2) After an applicant has been notified that his or her application has been approved, but
4 before the permit is issued, if necessary, the applicant shall update the application to indicate what
5 change, if any, has occurred in the information previously submitted under subsection (1) of this
6 section.

7 (3) Upon request by a small operator, the cabinet shall provide to the small operator, with
8 regard to persons under subsection (1) of this section who are identified by the small operator, the
9 compliance information required by this section regarding suspension and revocation of permits
10 and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS
11 Chapter 350 and administrative regulations promulgated thereunder.

12 Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a
13 description of the documents upon which the applicant bases his or her legal right to enter and
14 begin surface mining activities in the permit area and if that right is the subject of pending
15 litigation. The description shall identify those documents by type and date of execution, identify
16 the specific lands to which the document pertains, and explain the legal rights claimed by the
17 applicant.

18 (2) If the private mineral estate to be mined has been severed from the private surface
19 estate, the application shall contain:

20 (a) A copy of the written consent of the surface owner for the extraction of coal by surface
21 mining methods;

22 (b) A copy of the conveyance that expressly grants or reserves the right to extract coal by
23 surface mining methods; or

1 (c) If the conveyance does not expressly grant the right to extract the coal by surface mining
2 methods, documentation that under applicable state law, the applicant has the legal authority to
3 extract coal by those methods.

4 (3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property
5 rights disputes.

6 Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application
7 shall contain a statement of available information identifying if the proposed permit area is within
8 an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under
9 study for designation in an administrative proceeding under that chapter.

10 (2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the
11 application shall contain information supporting the applicant's assertion that the applicant made
12 substantial legal and financial commitments before January 4, 1977, concerning the proposed
13 surface mining activities.

14 (3) If an applicant proposes to conduct surface mining activities within 300 feet of an
15 occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required
16 in 405 KAR 24:040, Section 2(5).

17 (4) If the applicant proposes to conduct surface mining activities within 100 feet of a public
18 road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

19 Section 6. Permit Term Information. (1) Each application shall state the anticipated or
20 actual starting and termination date of each phase of the surface mining activities and the
21 anticipated number of acres of land to be affected for each phase of mining and over the total life
22 of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be

1 filed with the cabinet and made a part of the application, not later than fifteen (15) days after the
2 last date of publication required under 405 KAR 8:010, Section 8(2):

3 Section 11. Environmental Resources Information. (1) Each permit application shall
4 include a description of the existing environmental resources within the proposed permit area and
5 adjacent areas as required by Sections 11 through 23 of this administrative regulation. The
6 description required by this administrative regulation may, where appropriate, be based upon
7 published texts or other public documents together with reasonable extrapolations from specific
8 data available from existing permit areas or other appropriate areas.

9 (2)(a) Each application shall describe and identify the nature of cultural, historic, and
10 archaeological resources listed or eligible for listing on the National Register of Historic Places
11 and known archaeological sites within the proposed permit area and adjacent areas. The
12 description shall be based on all available information, including information from the state
13 Historic Preservation Officer and from local archaeological, historical, and cultural preservation
14 agencies.

15 (b) According to historical databases, the cabinet may require the applicant to identify and
16 evaluate important historic and archaeological resources that may be eligible for listing on the
17 National Register of Historic Places, through collection of additional information, field
18 investigations, or other appropriate analyses.

19 Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1)
20 The application shall contain baseline geologic and hydrologic information that has been collected,
21 analyzed, and submitted in the detail and manner sufficient to:

22 (a) Identify and describe protective measures pursuant to Section 32(1) of this
23 administrative regulation that will be implemented during the mining and reclamation process to

1 assure protection of the hydrologic balance or to demonstrate that protection of the hydrologic
2 balance can be assured without the design and installation of protective measures, and to design
3 necessary protective measures pursuant to Section 32(2) of this administrative regulation;

4 (b) Determine the probable hydrologic consequences of the mining and reclamation
5 operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section
6 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant
7 to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on
8 the hydrologic balance in the cumulative impact area;

9 (c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required
10 by 405 KAR can be accomplished and if the proposed operation has been designed to prevent
11 material damage to the hydrologic balance; and

12 (d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this
13 administrative regulation for the during-mining and postmining time period which, together with
14 the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall
15 demonstrate if the mining operation is meeting applicable effluent limitations and stream standards
16 and protecting the hydrologic balance.

17 (2)(a) Geologic and hydrologic information pertaining to the area outside the permit and
18 adjacent area but within the cumulative impact assessment area shall be provided to the applicant
19 by the cabinet if this information is:

- 20 1. Needed in preparing the cumulative impact assessment; and
- 21 2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation, or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

(a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or

(b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined.

2. Where aquifers located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

1 3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine
2 the distribution of strata that have a potential to produce acid drainage and to determine the area
3 and vertical extent of aquifers that may be adversely affected.

4 4. If the vertical extent, and the area and vertical density of sampling specified in
5 subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a
6 topsoil substitute, or for other required design or analysis, additional sampling shall be conducted
7 as necessary to furnish adequate geologic information;

8 (b) Chemical analyses including maximum potential acidity and neutralization potential of
9 each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to
10 identify those strata which have a potential to produce acid or toxic drainage; and

11 (c) Chemical analyses of the coal seam to be mined to determine the potential to produce
12 acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the
13 cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an
14 analysis for total sulfur provides adequate information to assure protection of the hydrologic
15 balance.

16 (2) Collection of geologic information from the permit area as required in this subsection
17 may be waived in whole or in part if:

18 (a) The applicant can demonstrate through geologic correlation or other procedures that
19 information collected from outside the permit area is representative of the permit area and is
20 sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

21 (b) Other information equivalent to that required by this subsection is available to the
22 cabinet and is made a part of the permit application; and

23 (c) The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers; and

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers that may be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

1 Section 14. Baseline Groundwater Information. (1) The application shall contain baseline
2 groundwater information for the permit area and adjacent area that shall be collected and submitted
3 in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

4 (2) Groundwater information shall include an inventory of wells, springs, underground
5 mines, or other similar groundwater supply facilities currently being used, have been used in the
6 past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial
7 purpose. The inventory shall include the location, ownership, type of usage, and if possible, other
8 relevant information such as the depth and diameter of wells and approximate rate of usage,
9 pumpage, or discharge from wells, springs, and other groundwater supply facilities.

10 (3) Groundwater information shall include seasonal groundwater quantity and quality data
11 collected from monitoring wells, springs, underground mines, or other appropriate groundwater
12 monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution
13 to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater
14 quantity and quality data shall be provided for each water transmitting zone above, and potentially
15 impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

16 (a) Groundwater levels; and

17 (b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C,
18 pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior
19 to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and
20 dissolved manganese.

21 (4) The groundwater information described in subsection (3) of this section shall be
22 required in whole or in part for coal seams if the coal seams to be mined are serving as water
23 supply sources or are otherwise significant in protecting the hydrologic balance.

1 (5) If additional information is needed to assess the need for protective measures, to design
2 protective measures, to determine the probable hydrologic consequences of mining, or to conduct
3 the cumulative impact assessment, the cabinet shall require groundwater information in addition
4 to that described in subsections (2), (3), and (4) of this section including information pertaining to
5 aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

6 Section 15. Baseline Surface Water Information. (1) The application shall contain baseline
7 surface water information for the permit area and adjacent area that shall be collected and
8 submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative
9 regulation.

10 (2) Surface water information shall include an inventory of all streams, lakes,
11 impoundments, or other surface water bodies in the permit and adjacent area that are currently
12 being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall
13 include the name of the surface water body being used as a water supply source; the location,
14 drainage area, ownership, and type of usage for the withdrawal; and if possible other relevant
15 information such as the rate of withdrawal and seasonal variation.

16 (3) Surface water information shall include:

17 (a) The name, location, and ownership if appropriate, of all streams, lakes, impoundments,
18 and other surface water bodies that receive run-off from watersheds that will be disturbed by the
19 operation; and

20 (b) The location and description of any existing facilities located in watersheds that will be
21 disturbed by the mining operation and may contribute to surface water pollution, such as existing
22 or abandoned mining operations, oil wells, logging operations, or other similar facilities, including
23 the location of any discharges that may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section, including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) Upon cabinet request, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

1 (a) The average seasonal precipitation;

2 (b) The average direction and velocity of prevailing winds; and

3 (c) Seasonal temperature ranges.

4 (2) The cabinet shall request additional data if necessary to ensure compliance with the
5 requirements of this chapter.

6 Section 18. Soil Resources Information. (1) If soil survey information for the proposed
7 permit area is available from SCS, the application shall include this information as a part of the
8 description of premining land use capability and productivity required by Section 22(1)(b) of this
9 administrative regulation.

10 (2) Where the applicant proposes to use selected overburden materials as a supplement or
11 substitute for topsoil, the application shall provide results of analyses, trials, and tests as required
12 under 405 KAR 16:050, Section 2(5).

13 Section 19. Vegetation Information. (1) The permit application shall contain a map that
14 delineates existing vegetative types and a description of the plant communities within the proposed
15 permit area and within any proposed reference area. This description shall include information
16 adequate to predict the potential for reestablishing vegetation.

17 (2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to
18 allow evaluation of vegetation as important habitat for fish and wildlife.

19 Section 20. Fish and Wildlife Resources Information. (1) Each application shall include
20 fish and wildlife resource information for the permit area and adjacent area. The scope and level
21 of detail for this information shall be determined by the cabinet in consultation with the Kentucky
22 Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and

1 Wildlife Service, and shall be sufficient to design the protection and enhancement plan required
2 under Section 36 of this administrative regulation.

3 (2) Site-specific resource information necessary to address the respective species or
4 habitats shall be required if the permit area or adjacent area is likely to include:

5 (a) Listed or proposed endangered or threatened species of plants or animals or their critical
6 habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as
7 amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

8 (b) Habitats of unusually high value for fish and wildlife such as important streams,
9 wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection,
10 migration routes, or reproduction and wintering areas; or

11 (c) Other species or habitats identified through agency consultation as requiring special
12 protection under state or federal law.

13 (3) Wetland delineations shall be conducted in accordance with:

14 (a) The Corps of Engineers Wetlands Delineation Manual;

15 (b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

16 (c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and
17 Summary; and

18 (d) List of Hydric Soils of the United States, All Kentucky Counties.

19 (4) Upon request, the cabinet shall provide the resource information required under this
20 section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office
21 for their review. This information shall be provided within ten (10) days of receipt of the request
22 from the Service.

1 (5)(a) Fish and wildlife resource information shall be required for amendments and
2 revisions that:

- 3 1. Propose extension into a wetland;
- 4 2. Propose significant disturbance in a new watershed in which the permit area or adjacent
5 area includes an important stream;
- 6 3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek
7 to modify an existing stream buffer zone variance;
- 8 4. Propose extension of the permit boundary that involves a new surface disturbance of five
9 (5) acres or more; or
- 10 5. Involve new permit or adjacent areas likely to contain, or that could reasonably be
11 expected to contain, a state or federal endangered or threatened species or its critical habitat.

12 (b) For other amendments and revisions, a determination of if fish and wildlife information
13 is necessary, and the scope of information needed, shall be made on a case-by-case basis in
14 consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and
15 Wildlife.

16 (6) This section shall apply to applications for permits, amendments and revisions
17 submitted to the cabinet on or after November 17, 1992.

18 Section 21. Prime Farmland Investigation. (1) The applicant shall before making
19 application investigate the proposed permit area to determine if lands within the area may be prime
20 farmland.

21 (2) Land shall not be considered prime farmland if the applicant can demonstrate one (1)
22 of the following:

- 23 (a) The land has not been historically used as cropland;

1 (b) The slope of the land is ten (10) percent or greater;

2 (c) Other relevant factors exist, which would preclude the soils from being defined as prime
3 farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the
4 growing season more often than once in two (2) years, and the flooding has reduced crop yields;
5 or

6 (d) On the basis of a soil survey of lands within the permit area, there are no soil map units
7 that have been designated prime farmland by the U.S. SCS.

8 (3) If the investigation establishes that the lands are not prime farmland, the applicant shall
9 submit with the permit application a request for a negative determination and results of the
10 investigation that show that the land for which the negative determination is being sought meets
11 one (1) of the criteria of subsection (2) of this section.

12 (4) If the investigation indicates that lands within the proposed permit area may be prime
13 farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those
14 lands and if the applicable soil map units have been designated as prime farmlands. If no soil
15 survey has been made for the lands within the proposed permit area, the applicant shall request the
16 SCS to conduct a soil survey.

17 (a) If a soil survey of lands within the proposed permit area contains soil map units
18 designated as prime farmlands, the applicant shall submit an application, in accordance with 405
19 KAR 8:050, Section 3 for the designated land.

20 (b) If a soil survey for lands within the proposed permit area contains no soil map units
21 designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the
22 permit application a request for negative determination under subsection (2)(d) of this section for
23 the nondesignated land.

1 (5) The cabinet shall decide to grant or deny a negative determination based upon
2 documentation provided by the applicant and any other pertinent information, such as cropping
3 history, available to the cabinet from other sources.

4 (6) The cabinet shall consult with the SCS in deciding on a request for negative
5 determination under subsection (2)(c) of this section.

6 (7) The cabinet shall examine any records on crop history available from the Agriculture
7 Stabilization and Conservation Service when deciding on a request for negative determination
8 under subsection (2)(a) of this section.

9 Section 22. Land-use Information. (1) The application shall contain a statement of the
10 condition, capability, and productivity of the land within the proposed permit area, including:

11 (a) A map and supporting narrative of the uses of the land existing when the application is
12 filed. If the premining use of the land was changed within five (5) years before the date of
13 application, the historic use of the land shall also be described; and

14 (b) A narrative of land use capability and productivity, which analyzes the land-use
15 description in conjunction with other environmental resources information required under this
16 administrative regulation. The narrative shall provide analyses of:

17 1. The capability of the land before any mining to support a variety of uses, giving
18 consideration to soil and foundation characteristics, topography, vegetative cover, and the
19 hydrology of the proposed permit area; and

20 2. The productivity of the proposed permit area before mining, expressed as average yield
21 of food, fiber, forage, or wood products from the lands obtained under high levels of management.
22 The productivity shall be determined by yield data or estimates for similar sites based on current

1 data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state
2 natural resource or agricultural agencies.

3 (2) The application shall state if the proposed permit area has been previously mined, and,
4 if so and, if available, the:

5 (a) Type of mining method used;

6 (b) Coal seams or other mineral strata mined;

7 (c) Extent of coal or other minerals removed;

8 (d) Approximate dates of past mining; and

9 (e) Uses of the land preceding mining.

10 (3) The application shall contain a description of the existing land uses and local
11 government land use classifications, if any, of the proposed permit area and adjacent areas.

12 (4) The application shall contain a description identifying the extent to which cities, towns,
13 and municipalities, or parts thereof, are located within the proposed permit area.

14 Section 23. Maps and Drawings. (1) The permit application shall include a map or maps
15 showing:

16 (a) The boundaries of all subareas proposed to be affected over the estimated total life of
17 the proposed surface mining activities, with a description of the size, sequence, and timing of the
18 surface mining operations for which it is anticipated that additional permits will be sought;

19 (b) Any land within the proposed permit area and adjacent area within the boundaries of
20 any units of the National System of Trails or the Wild and Scenic Rivers System, including study
21 rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or
22 which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

1 (c) The boundaries of any public park and locations of any cultural or historical resources
2 listed on or eligible for listing on the National Register of Historic Places and known
3 archaeological sites within the permit area and adjacent areas;

4 (d) The locations of water supply intakes for current users of surface water within a
5 hydrologic area defined by the cabinet, and those surface waters that will receive discharges from
6 affected areas in the proposed permit area;

7 (e) All boundaries of lands and names of present owners of record of those lands, both
8 surface and subsurface, included in or contiguous to the permit area;

9 (f) The boundaries of land within the proposed permit area upon which the applicant has
10 the legal right to enter and begin surface mining activities;

11 (g) The location of surface and subsurface manmade features within, passing through, or
12 passing over the proposed permit area, including major electric transmission lines, pipelines, and
13 agricultural drainage tile fields;

14 (h) The location and boundaries of any proposed reference areas for determining the
15 success of revegetation for the permit area;

16 (i) The location of all buildings on and within 1,000 feet of the proposed permit area, with
17 identification of the current use of the buildings;

18 (j) Each public road located in or within 100 feet of the proposed permit area;

19 (k) Each cemetery that is located in or within 100 feet of the proposed permit area; and

20 (l) Other relevant information required by 30 C.F.R. 779.24(l).

21 (2) The application shall include drawings, cross sections, and maps showing:

22 (a) Elevations and locations of test borings and core samplings;

1 (b) Elevations and locations of monitoring stations or other sampling points in the permit
2 area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air
3 quality, if required, in preparation of the application, or which will be used for this data gathering
4 during the term of the permit;

5 (c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams
6 above the seam to be mined, each stratum of the overburden, and the stratum immediately below
7 the lowest coal seam to be mined, for the permit area;

8 (d) All coal crop lines and the strike and dip of the coal to be mined within the proposed
9 permit area;

10 (e) Location and extent of known workings of active, inactive, or abandoned underground
11 mines, including mine openings to the surface within the proposed permit area and adjacent areas;

12 (f) Location and extent of subsurface water, if encountered, within the proposed permit
13 area or adjacent areas;

14 (g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or
15 natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

16 (h) Location and extent of existing or previously surface-mined areas within the proposed
17 permit area;

18 (i) Location, and depth if available, of gas and oil wells within the proposed permit area
19 and water wells in the permit area and adjacent areas;

20 (j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal,
21 dams, embankments, other impoundments, and water treatment and air pollution control facilities
22 within the proposed permit area; and

1 (k) Sufficient slope measurements to adequately represent the existing land surface
2 configuration of the proposed permit area, measured and recorded according to the requirements
3 established in subparagraphs 1. through 3. of this paragraph.

4 1. Each measurement shall consist of an angle of inclination along the prevailing slope
5 extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed
6 or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining
7 and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through
8 24, can be feasibly accomplished in accordance with the mining and reclamation plan.

9 2. Where the area has been previously mined, the measurements shall extend at least 100
10 feet beyond the limits of mining disturbances, or any other distance representative of the premining
11 configuration of the land.

12 3. Slope measurements shall take in account natural variations in slope, to provide accurate
13 representation of the range of natural slopes and reflect geomorphic differences of the area to be
14 disturbed.

15 (3) The permit application shall include the map information specified in Sections 22(1)(a),
16 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and
17 405 KAR 8:010, Section 5(6).

18 (4) Maps, drawings, and cross-sections included in a permit application that are required
19 by this section shall be prepared by or under the direction of and certified by a qualified registered
20 professional engineer, and shall be updated as required by the cabinet if there is a material change.
21 The qualified registered professional engineer shall not be required to certify true ownership of
22 property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas pursuant to paragraphs (a) through (c) of this subsection.

1 (a) The plans and maps shall show the lands proposed to be affected throughout the
2 operation and any change in a facility or feature to be caused by the proposed operations, if the
3 facility or feature was shown under Section 23 of this administrative regulation.

4 (b) The following shall be shown for the proposed permit area:

5 1. Buildings, utility corridors, and facilities to be used;

6 2. The area of land to be affected within the proposed permit area, according to the
7 sequence of mining and reclamation;

8 3. Each area of land for which a performance bond or other equivalent guarantee will be
9 posted under 405 KAR Chapter 10;

10 4. Each coal storage, cleaning, and loading area;

11 5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

12 6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility
13 to be used;

14 7. Each air pollution collection and control facility;

15 8. Each source of waste and each waste disposal facility relating to coal processing or
16 pollution control;

17 9. Each facility to be used to protect and enhance fish and wildlife and related
18 environmental values;

19 10. Each explosive storage and handling facility; and

20 11. Location of each sedimentation pond, permanent water impoundment, coal processing
21 waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of
22 this administrative regulation, and fill area for the disposal of excess spoil in accordance with
23 Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

1 (g) A description of measures to be employed to ensure that all debris, acid-forming and
2 toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with
3 405 KAR 16:150 and 16:190, Section 3, and a description of the contingency plans that have been
4 developed to preclude sustained combustion of the materials;

5 (h) A description, including appropriate maps and drawings, of the measures to be used to
6 seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes,
7 wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040;
8 and

9 (i) A description of steps to be taken to comply with the requirements of the Clean Air Act
10 (42 U.S.C. Chapter 85), the Clean Water Act (33 U.S.C. Chapter 26), and other applicable air and
11 water quality laws and regulations and health and safety standards. This description shall, at a
12 minimum, consist of identification of permits or approvals required by these laws and regulations
13 which the applicant either has obtained, has applied for, or intends to apply for.

14 Section 25. MRP; Existing Structures. (1) Each application shall contain a description of
15 each existing structure proposed to be used in connection with or to facilitate the surface coal
16 mining and reclamation operation. The description shall include:

17 (a) Location;

18 (b) Plans of the structure that describe the structure's current condition;

19 (c) Approximate dates on which construction of the existing structure was begun and
20 completed; and

21 (d) A showing, including relevant monitoring data or other evidence, that ~~of if~~ the
22 structure meets the performance standards of 405 KAR Chapters 16 through 20 ~~or, if the structure~~

1 ~~does not meet those performance standards, a showing of if the structure meets the performance~~
2 ~~standards of the interim performance standards of 405 KAR Chapter 1].~~

3 (2) Each application shall contain a compliance plan for each existing structure proposed
4 to be modified or reconstructed for use in connection with or to facilitate the surface coal mining
5 and reclamation operation. The compliance plan shall include:

6 (a) Design specifications for the modification or reconstruction of the structure to meet the
7 performance standards of 405 KAR Chapters 16 through 20;

8 (b) A construction schedule that shows dates for beginning and completing interim steps
9 and final reconstruction;

10 (c) Provisions for monitoring the structure to ensure that the performance standards of 405
11 KAR Chapters 16 through 20 are met; and

12 (d) A showing that the risk of harm to the environment or to public health or safety will
13 not be significant during the period of modification or reconstruction.

14 Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the
15 proposed permit area explaining how the applicant intends to comply with the requirements of 405
16 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the
17 permittee shall meet with regard to:

18 (a) Ground vibration and airblast;

19 (b) The bases for the ground vibration and airblast limitations; and

20 (c) The methods to be applied in controlling the adverse effects of blasting operations.

21 (2) Each application shall contain a description of the systems to be used to monitor
22 compliance with the standards for ground vibration and airblast including identification of the

1 types, capabilities, and sensitivities of blast monitoring equipment and identification of the
2 monitoring procedures and locations.

3 (3) Blasting operations within 500 feet of active underground mines shall require approval
4 of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

5 Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions,
6 including appropriate maps and cross-section drawings, of the proposed disposal site and design
7 of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the
8 geotechnical investigation, design, construction, operation, maintenance, and removal if
9 appropriate, of the site and structures.

10 (2) Each application shall contain the results of a geotechnical investigation of the proposed
11 disposal site, including:

12 (a) The character of bedrock and any adverse geologic conditions in the disposal area;

13 (b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated
14 during wet periods in the area of the disposal site;

15 (c) An assessment of the potential effects of subsidence of the subsurface strata due to past
16 and future mining operations;

17 (d) A technical description of the rock materials to be utilized in the construction of those
18 disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

19 (e) A stability analysis including strength parameters, pore pressures, and long-term
20 seepage conditions. These data shall be accompanied by a description of all engineering design
21 assumptions and calculations and the alternatives considered in selecting the specific design
22 specifications and methods.

1 (3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are
2 required, the application shall include:

3 (a) The number, location, and depth of borings or test pits that shall be determined with
4 respect to the size of the spoil disposal structure and subsurface conditions; and

5 (b) Engineering specifications utilized to design the rock toe buttresses or key way cuts
6 that shall be determined in accordance with subsection (2)(e) of this section.

7 Section 28. MRP; Transportation Facilities. (1) Each application shall contain a
8 transportation facilities plan including a description of each road, conveyor, or rail system to be
9 constructed, used, or maintained within the proposed permit area. The description shall include a
10 map, appropriate cross-sections, and:

11 (a) Specifications for each road width, road gradient, road surface, road cut, fill
12 embankment, culvert, bridge, drainage ditch, and drainage structure;

13 (b) A report of appropriate geotechnical analysis, if approval of the cabinet is required for
14 alternative specifications, or for steep cut slopes under 405 KAR 16:220;

15 (c) A description of measures to be taken to obtain approval of the cabinet for alteration or
16 relocation of a natural drainageway under 405 KAR 16:220; and

17 (d) A description of measures, other than use of a rock headwall, to be taken to protect the
18 inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

19 (2) Each plan shall contain a general description of each road, conveyor, or rail system to
20 be constructed, used, or maintained within the proposed permit area.

21 Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities
22 within the proposed permit area to be conducted within 500 feet of an underground mine, the
23 application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

1 Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-
2 owned parks or any places listed on the National Register of Historic Places that may be adversely
3 affected by the proposed operations, each plan shall describe the measures to be used to prevent
4 adverse impact or, if valid existing rights exist or joint agency approval is to be obtained under
5 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

6 (2) The cabinet may, pursuant to 30 C.F.R. 780.31, require the applicant to protect historic
7 or archaeological properties listed or eligible for listing on the National Register of Historic Places
8 through appropriate mitigation and treatment measures. These measures need not be completed
9 prior to permit issuance, but shall be completed before the properties are affected by surface mining
10 activities.

11 Section 31. MRP; Protection of Public Roads. Each application shall describe, with
12 appropriate maps and drawings, the measures to be used to ensure that the interests of the public
13 and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks
14 to have the cabinet approve:

15 (1) Conducting the proposed surface mining activities within 100 feet of the right-of-way
16 line of any public road, except where mine access or haul roads join that right-of-way; or

17 (2) Relocating a public road.

18 Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain
19 a description, as set forth in this subsection, of the measures to be taken to minimize disturbances
20 to the hydrologic balance within the permit area and adjacent area and to prevent material damage
21 to the hydrologic balance outside the permit area.

1 (a) The description shall be based upon the baseline geologic, hydrologic, and other
2 information required by Sections 12 through 16 of this administrative regulation and other
3 appropriate information, shall be specific to local hydrologic conditions.

4 (b) The description shall identify the protective measures to be taken to enable the
5 operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph,
6 or shall demonstrate that protective measures are not necessary for the operation to:

7 1. Meet applicable water quality statutes, administrative regulations, standards, and
8 effluent limitations as required by 405 KAR 16:060, Section 1(3);

9 2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

10 3. Control the discharge of sediment to streams located outside the permit area as required
11 by 405 KAR 16:060, Section 2;

12 4. Control the drainage and discharge of water within the permit area as required by 405
13 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

14 5. Restore the approximate premining recharge capacity of the permit area as required by
15 405 KAR 16:060, Section 5; and

16 6. Protect or replace the water supply of present users as required by 405 KAR 16:060,
17 Section 8.

18 (c) The cabinet may require that the description include protective measures in addition to
19 those identified under paragraph (b) of this subsection, if additional measures are needed to protect
20 the hydrologic balance in accordance with 405 KAR 16:060.

21 (2) Each application shall include the design of any necessary protective measures
22 identified under subsection (1) of this section. The design shall be prepared in a manner and detail

1 acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written
2 explanations as necessary to document the design.

3 (3) Each application shall include a determination of the probable hydrologic consequences
4 of the mining and reclamation operations for the permit area and adjacent area.

5 (a) The determination shall be based upon the baseline geologic, hydrologic, and other
6 information required by Sections 12 through 16 of this administrative regulation and other
7 appropriate information, and may include information statistically representative of the site.

8 (b) The determination shall be completed according to the parameters and in the detail
9 necessary to enable the cabinet to prepare a cumulative impact assessment, and shall take into
10 account the anticipated effects of protective measures required by this chapter.

11 (c) For surface water systems, the determination shall, at a minimum, include probable
12 impacts on:

- 13 1. Peak discharge rates, emphasizing the potential for flooding;
- 14 2. Settleable solids at peak discharge;
- 15 3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
- 16 4. Suspended solids at low flow; and
- 17 5. pH, at low flow, emphasizing the potential for acid drainage conditions, including
18 depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total
19 dissolved solids or specific conductance, which are generally associated with acid drainage
20 conditions.

21 (d) For groundwater systems, the determination shall, at a minimum, include probable
22 impacts on:

1 1. Water quantity, emphasizing water levels and the potential for water supply diminution
2 for existing users, and dewatering of aquifers that are not currently being used for water supply
3 but have the potential to be developed as a water supply source; and.

4 2. pH, emphasizing the potential for acid drainage conditions, including depressed levels
5 of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or
6 specific conductance, which are generally associated with acid drainage conditions.

7 (e) The determination shall include a finding on if the proposed surface mining activities
8 may proximately result in contamination, diminution, or interruption of an underground or surface
9 source of water within the permit area or adjacent areas that is used for domestic, agricultural,
10 industrial, or other legitimate use upon application.

11 (f) An application for a major revision to a permit shall be reviewed by the cabinet to
12 determine if a new or updated determination of the probable hydrologic consequences shall be
13 required.

14 (4)(a) The application shall include a plan for the collection, recording, and reporting of
15 groundwater and surface water quantity and quality data to monitor the effects of the mining and
16 reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

17 (b) The monitoring plan shall be based on the geologic and hydrologic baseline
18 information, the mining and reclamation plan, and the determination of probable hydrologic
19 consequences; and shall:

20 1. Identify the quantity and quality parameters to be monitored, sampling frequency, and
21 monitoring site locations; and

22 2. Describe how the data may be used to determine the impacts of the operation on the
23 hydrologic balance.

1 (5) An application for a major revision to a permit shall be reviewed by the cabinet to
2 determine if a new or updated cumulative hydrologic impact assessment shall be made.

3 Section 33. MRP; Diversions. Each application shall contain descriptions, including maps
4 and cross-sections, of stream channel diversions and other diversions to be constructed within the
5 proposed permit area to achieve compliance with 405 KAR 16:080.

6 Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall
7 include detailed design plans for each proposed sedimentation pond, water impoundment, and coal
8 mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

9 (a) Be prepared by, or under the direction of, and certified by a qualified registered
10 professional engineer;

11 (b) Contain a description, map, and appropriate cross-sections and drawings of the structure
12 and its location;

13 (c) Contain all hydrologic and geologic information and computations necessary to
14 demonstrate compliance with the design and performance standards of 405 KAR Chapter 16 and
15 all information utilized by the applicant to determine the probable hydrologic consequences of the
16 mining operations under Section 32(3) of this administrative regulation;

17 (d) Contain an assessment of the potential effect on the structure from subsidence of the
18 subsurface strata resulting from past underground mining operations if underground mining has
19 occurred;

20 (e) Include any geotechnical investigation, design, and construction requirements for the
21 structure;

22 (f) Describe the operation and maintenance requirements for each structure; and

23 (g) Describe the timetable and plans to remove each structure, if appropriate.

1 (2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be
2 designed in compliance with the requirements of 405 KAR 16:090 and 16:100.

3 (3) Permanent and temporary impoundments. Permanent and temporary impoundments
4 shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an
5 impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with
6 the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the
7 district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the
8 permit application. After the plan has been approved by MSHA, the applicant shall submit to the
9 cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the
10 plan, a copy of any technical support documents requested by MSHA during its review, and a
11 notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct
12 copy of the final plan approved by MSHA.

13 (4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the
14 requirements of 405 KAR 16:140.

15 (5) Coal mine waste dams and embankments. Coal mine waste dams and embankments
16 shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for
17 an impounding structure that is required to be submitted to the district manager of MSHA under
18 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan
19 has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved
20 plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support
21 documents requested by MSHA during its review, and a notarized statement by the applicant that
22 the copy submitted to the cabinet is a complete and correct copy of the final plan approved by
23 MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-

2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to:

(a) The number, location, and depth of borings and test pits determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions;

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site;

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

(d) Consideration of the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activity, the application shall contain an air pollution control plan that includes:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved as practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

1 (3) Upon request, the cabinet shall provide the protection and enhancement plan required
2 under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or
3 field office for their review. This information shall be provided within ten (10) days of receipt of
4 the request from the Service.

5 (4)(a) A fish and wildlife protection and enhancement plan shall be required for
6 amendments and revisions that:

7 1. Propose extension into a wetland;

8 2. Propose significant disturbance in a new watershed in which the permit area or adjacent
9 area includes an important stream;

10 3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek
11 to modify an existing stream buffer zone variance;

12 4. Propose extension of the permit boundary that involves a new surface disturbance of five
13 (5) acres or more; or

14 5. Involve new permit or adjacent areas likely to contain, or that could reasonably be
15 expected to contain, a state or federal endangered or threatened species or its critical habitat.

16 (b) For other amendments and revisions, a determination of if a protection and
17 enhancement plan is necessary shall be made on a case-by-case basis in consultation with
18 Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

19 (5) This section shall apply to applications for permits, amendments and revisions
20 submitted to the cabinet on or after November 17, 1992.

21 Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the
22 proposed land use or uses following reclamation of the land within the proposed permit area,
23 including:

1 (a) A discussion of the utility and capacity of the reclaimed land to support a variety of
2 alternative uses, and the relationship of the proposed use to existing land use policies and plans;

3 (b) A discussion of how the proposed postmining land use is to be achieved and the
4 necessary support activities that may be needed to achieve the proposed land use, including
5 management practices to be conducted during the liability period for the commercial-forest land,
6 cropland (including hayland), and pastureland land uses;

7 (c) If a land use different from the premining land use is proposed, all supporting
8 documentation required for approval of the proposed alternative use under 405 KAR 16:210;

9 (d) A discussion of the consideration that has been given to making all of the proposed
10 surface mining activities consistent with surface owner plans and applicable state and local land
11 use plans and programs; and

12 (e) A copy of the comments concerning the proposed use from the legal or equitable owner
13 of record of the surface of the proposed permit area and the state and local government agencies,
14 if any, which would have to initiate, implement, approve, or authorize the proposed use of the land
15 following reclamation.

16 (2) Approval of the initial postmining land use plan pursuant to this section, shall not
17 preclude subsequent consideration and approval of a revised postmining land use plan in
18 accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

19 Section 38. Incorporation by Reference. (1) The following material is incorporated by
20 reference:

21 (a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition,
22 1975), American Public Health Association, American Water Works Association, and Water
23 Pollution Control Federation;

1 (b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S.
2 Army Corps of Engineers;

3 (c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September
4 26, 1990), U. S. Army Corps of Engineers;

5 (d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and
6 Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

7 (e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991
8 Edition), Soil Conservation Service, U. S. Department of Agriculture;

9 (2) This material may be inspected, copied, or obtained at the Department for Natural
10 Resources, 300 Sower Boulevard, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30
11 p.m.

405 KAR 8:030 approved for filing.
Pages (1-44)

9/13/2019

Date

Charles G. Snavely

Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 8:030
Contact Person: Michael Mullins

Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements specific to granting a surface coal mining permit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for issuing a surface coal mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation conforms to the authorizing statutes by establishing requirements for issuing surface coal mine permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements specific to issuing surface coal mine permits.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment deletes language that allows existing structures to meet the requirements in the interim program administrative regulations. These administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make remove references to the interim program administrative regulations that were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing a reference to the interim program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. These amendments are necessary to remove references to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that wants to obtain a surface coal mine permit.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to ensure all existing structures meet the requirements of the permanent program administrative regulations (405 KAR Chapters 16-20).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities listed in question (3) not experience an increased cost. The existing structures would still be required to meet the standards in the permanent program administrative regulations as established in Section 25(2) of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits that will be realized by the regulated entities are the result of the references to the interim program administrative regulations being removed.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that want a surface coal mining permit are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 8:030
Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720
Email: Michael.mullins@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation No.: 405 KAR 8:030
Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720
Email: Michael.mullins@ky.gov

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Parts 779 and 780
2. State Compliance Standards. KRS 350.060.
3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to the issuance of surface mining permits.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments simply remove outdated references to administrative regulations that were repealed in 2018. The removal of this information does not make the administrative regulation more stringent than the corresponding federal administrative regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA